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DNAX RESEARCH INC.
LEGAL DEPARTMENT
901 CALIFORNIA AVENUE
PALO ALTO CA 94304

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JUL 07 2008

OFFICE OF PETITIONS

In re Application of :
Chirica et al. : ON APPLICATION
Application No. 10/667,290 : FOR
Filed: September 18, 2003 : PATENT TERM ADJUSTMENT
Attorney Docket No. DX01074B1 :

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE (37 C.F.R. §1.705)(b)) filed June 6, 2008. Applicants request correction of the patent term adjustment indicated in the Notice of Allowance mailed March 11, 2008 from five hundred forty-three (543) days to seven hundred thirteen (713) days.

The application for patent term adjustment is **GRANTED to the extent indicated herein.**

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is six hundred seventy-two (**672**) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

By decision mailed February 4, 2008, this application was withdrawn from issue. Accordingly, on decision mailed February 20, 2008, the decision on an application for patent term adjustment (including fee) timely filed December 20, 2007 was held in abeyance until the mailing of a new Determination of Patent Term Adjustment.

On March 11, 2008, the Office mailed a new Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 543 days. The instant application for patent term adjustment was timely resubmitted.¹ Applicants state that the determination is in error due to failure to appreciate that the first requirement for restriction in the case had been vacated based on an Office error. Applicants assert that the correct patent term adjustment under 37 C.F.R. § 1.702(a)(1) is 713 days. Applicants state that there was no circumstance that constitutes a failure to engage in reasonable efforts to conclude processing or examination of the application.

A review of the record confirms that on November 1, 2006, a restriction requirement vacating the May 15, 2006 action was mailed. In this instance, the November 1, 2006 date will be used in calculating the period of adjustment under § 1.702(a)(1). Thus, the period of adjustment is 713 days, counting the number of days beginning on November 19, 2004 and ending on November 1, 2006.

However, there was a circumstance that constitutes a failure to engage by applicants. A review of the record also reveals that an additional period of reduction of 41 days pursuant to 37 CFR 1.704(c)(10) should have been entered. A Notice of Allowance was mailed on October 3, 2007. Applicants filed a Request for Continued Examination (RCE) and IDS (and petition to withdraw from issue) on January 31, 2008. Prior to filing the RCE, applicant paid the Issue Fee. This set the calculation of the period of reduction pursuant to 37 CFR 1.704(b), if any, for applicant delay. The filing of the RCE and IDS after the mailing of the Notice of Allowance constituted a failure to engage pursuant to 37 CFR 1.704(c)(10). This period is 41 days, counting the number of days in the period beginning on January 31, 2008, the date of filing of the RCE and IDS and ending on March 11, 2008, the date of mailing of the new Notice of Allowance in response.

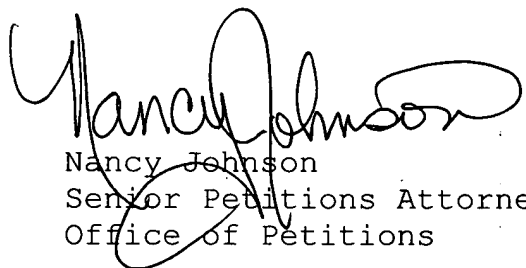
In view thereof, the correct initial determination of the patent term adjustment at the time of the mailing of the notice of allowance on March 11, 2008 is six hundred seventy-two (672) days (713 - 41).

¹ PALM records indicate that the issue fee was paid on June 9, 2008.

Payment of the fee set forth in 37 CFR 1.18(e) on December 20, 2007 is acknowledged. No additional fee is required.

The application is being forwarded to the Office of Data Management for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded and the period is not consumed by the request for continued examination).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over the typed name and title.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PTA calculation

Day : Wednesday

PALM INTRANET

Date: 7/2/2008

Time: 16:26:16

PTA Calculations for Application: 10/667290

Application Filing Date:	09/18/2003	PTO Delay (PTO):	543
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	0
Post-Issue Petitions:	0	Total PTA (days):	672
PTO Delay Adjustment:	129		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
97	07/02/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		41	
96	07/02/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		543	
95	07/02/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	713		
89	03/11/2008	MAIL NOTICE OF ALLOWANCE			
88	03/06/2008	ISSUE REVISION COMPLETED			
87	03/06/2008	DOCUMENT VERIFICATION			
86	03/06/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
85	03/03/2008	NOTICE OF ALLOWABILITY			
84	09/18/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
83	01/31/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
77	02/20/2008	MAIL-PETITION DECISION - DISMISSED			
76	02/20/2008	PETITION DECISION - DISMISSED			
75	02/19/2008	DATE FORWARDED TO EXAMINER			
74	01/31/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			
73	02/19/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
72	01/31/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
71	02/04/2008	MAIL-RECORD PETITION DECISION OF GRANTED TO WITHDRAW FROM ISSUE			
70	02/04/2008	RECORD PETITION DECISION OF GRANTED TO WITHDRAW FROM ISSUE			
69	01/31/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

68	09/18/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
67	01/31/2008	PETITION ENTERED			
66	01/31/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
65	01/15/2008	APPLICATION IS CONSIDERED READY FOR ISSUE			
64	12/21/2007	ISSUE FEE PAYMENT VERIFIED			
63	12/20/2007	PETITION ENTERED			
62	12/21/2007	ISSUE FEE PAYMENT RECEIVED			
61	10/18/2007	SEQUENCE FORWARDED TO PUBS ON TAPE			
60	10/08/2007	EXPORT TO INITIAL DATA CAPTURE			
59	10/03/2007	MAIL NOTICE OF ALLOWANCE			
58	10/02/2007	ISSUE REVISION COMPLETED			
57	10/02/2007	DOCUMENT VERIFICATION			
56	10/02/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
55	10/01/2007	NOTICE OF ALLOWABILITY			
54	07/28/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
53	09/21/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
52	09/21/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
51	09/27/2007	DATE FORWARDED TO EXAMINER			
50	09/21/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
49	09/27/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
48	09/21/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
47	09/21/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
46	07/28/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
45	09/21/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
44	08/03/2007	FINISHED INITIAL DATA CAPTURE			
43	06/29/2007	EXPORT TO INITIAL DATA CAPTURE			
42	06/26/2007	MAIL NOTICE OF ALLOWANCE			
41	06/26/2007	MAIL EXAMINER'S AMENDMENT			
40	06/21/2007	ISSUE REVISION COMPLETED			

39	06/21/2007	DOCUMENT VERIFICATION			
38	06/21/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
37	06/21/2007	CASE DOCKETED TO EXAMINER IN GAU			
36	06/21/2007	EXAMINER'S AMENDMENT COMMUNICATION			
35	06/21/2007	NOTICE OF ALLOWABILITY			
34	06/12/2007	DATE FORWARDED TO EXAMINER			
33	06/08/2007	RESPONSE AFTER NON-FINAL ACTION			
32	03/23/2007	MAIL NON-FINAL REJECTION			
31	03/19/2007	NON-FINAL REJECTION			
30	01/06/2007	DATE FORWARDED TO EXAMINER			
29	12/22/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
28	12/22/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
27	11/01/2006	MAIL RESTRICTION REQUIREMENT			
26	10/30/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
25	08/21/2006	DATE FORWARDED TO EXAMINER			
24	08/15/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
23	08/15/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
22	05/15/2006	MAIL RESTRICTION REQUIREMENT	543		-1
21	05/12/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
20	07/28/2005	REFERENCE CAPTURE ON IDS			
19.7	07/28/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
18	03/24/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
17.7	09/18/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	09/18/2003	PRELIMINARY AMENDMENT			
15	03/24/2004	CASE DOCKETED TO EXAMINER IN GAU			
14	03/03/2004	APPLICATION RETURN FROM OIPE			
13	03/03/2004	APPLICATION IS NOW COMPLETE			
10	03/01/2004	PRE-EXAM OFFICE ACTION WITHDRAWN			
9	03/01/2004	APPLICATION RETURN TO OIPE			
8	03/01/2004	APPLICATION DISPATCHED FROM OIPE			
7	03/01/2004	APPLICATION IS NOW COMPLETE			
6	02/20/2004	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			

5	09/18/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
4	12/01/2003	CASE CLASSIFIED BY OIPE			
3	12/01/2003	CLEARED BY OIPE CSR			
2	10/30/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	09/18/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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